

Take It or Leave It – Episode 46

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Josh Seidman: Hi everyone, and welcome back to the 46th episode of *Take It or Leave It*, where we discuss the hottest topics in the world of workplace leaves, actions management, and accommodations. I'm your host, Josh Seidman. It is terrific. It is marvelous to be back with you all for our first episode of 2026. Isn't it great that we just leapfrogged over winter?

I'm sure some of you tuning in today wishes that this could be a reality, especially when it would avoid a particularly tough winter like it was in the Northeast in 2026. I feel like the snow in the New York City area just melted. Finally, we can put away the boots and the scarves and the earmuffs. Maybe not the gloves just yet though, especially for anyone who is an early morning runner.

We recently taught one of my children about the seasons with support from the James Taylor song *You've Got a Friend*. Indeed—"Winter, spring, summer or fall, all you have to do is call." Maybe I need a second or third take on that, although not as bad as I've done in some of my practice rounds either. Hopefully that break into song and some of my other occasions of doing something similar in past episodes hasn't driven away too many of our listeners.

Yes, folks, spring is in full bloom across the states, the school year is winding down—great for students, maybe not as much for their parents—but thank goodness for summer vacations and camps on the horizon. Baseball is a month and a half in, and the Dodgers are pushing for a three-peat while my hometown Mets are off to, let's call it, a slow start. Really the nicest way I can put it. But there is plenty of time to get back to a .500 record, plenty of baseball left to be played this season. I'm not giving up hope just yet.

Each year, spring also brings the peak of many state legislative cycles, and along with it, the possibility of many bills becoming law. In recent years, we've seen the paid leave legislative wave grow and evolve, both in terms of new jurisdictions being added to the paid leave landscape—Alaska and Nebraska in the paid sick leave context, and Delaware, Maine, and Minnesota in the paid family medical leave context. We've also seen a number of jurisdictions amend their existing paid time off and paid leave mandates, including but certainly not limited to California, Colorado, Michigan, Oregon, Rhode Island, and Washington State.

Our Seyfarth Leaves of Absence Management and Accommodations team, as well as our firm's Survey Center team, keep a collective ear to the ground on many state legislatures and specifically what they are doing on the paid leave and leave of absence front. But given the volume and volatility in the paid leave space, it is always important to check in with other industry leaders and organizations to compare notes and make sure that we are all rowing in the same direction.

I can think of no one better to compare notes with on leave law legislative developments that have taken place so far in 2026 and what might still be on the horizon for businesses and their employees in the coming months than my friend Dillon Clair from the ERISA Industry Committee. Dillon is the Director of State Advocacy and Litigation at the ERISA Industry Committee, also known as ERIC. As ERIC fights against state mandates on large plan sponsors through state advocacy and targeted litigation, Dillon ensures that ERIC's advocacy efforts are aligned with these goals of plans to provide valuable benefits to the nationwide workforces.

Among Dillon's many roles and functions, he is the host of ERIC's monthly *State of the States* webinar, which covers, among many other things, the wave of state and local paid leave legislation being considered during the current legislative session. And I will say for folks, it's one of my favorite monthly events. I love attending Dillon's webinars—always so very insightful.

Also, back in 2023, this podcast (I suppose has been around for a minute), Dillon became the podcast's first-ever two-time guest expert. And today, he officially holds the prize title of being *Take It or Leave It's* first three-peat guest expert. Dillon, welcome back for another round, and thank you so much for joining us today.

Dillon Clair: It's great to be back, Josh.

Josh Seidman: Dillon, I appreciate you joining me again. You know, I was thinking we've got this episode today and then another one coming up shortly that we'll dive into in just a few more minutes and tee up what both are going to be focused on. If we have you back for one more episode after these next two sessions, I'm going to have to start some type of five-timers award celebration, you know, à la *Saturday Night Live* and their five-timers jacket.

Dillon Clair: That sounds good to me. I like the doubleheader for three and four. I'm looking forward to number five.

Josh Seidman: Me as well. You know, a five-timers hat or mug, or maybe something more enticing, some other more preferable swag. We can definitely brainstorm, my friend. We'll think outside the box.

Dillon Clair: Love it. I love it.

Josh Seidman: So for now, just to kick things off, can you remind folks just a little bit about ERIC and also generally how you and your team stay up to speed and stay on top of state paid leave legislative developments generally?

Dillon Clair: Yeah, absolutely. So ERIC, or the ERISA Industry Committee, is a DC-based trade association. We represent large employers, typically 10,000-plus employees, multi-state employers specifically in their role as plan sponsors. So lots of groups stick up for the employer perspective in a lot of areas, but we specifically are targeted on the plan sponsor sort of perspective and role that those employers hold. And so we work at the federal, state, and local levels on healthcare issues, retirement issues, paid leave issues, obviously—anything that really gets into the employee benefits space there.

And good question as far as tracking the state bills. There's always far from a shortage of paid leave bills introduced and considered at the state level. And, you know, a lot of it is building advocacy networks, working with our member companies, working with allies and like-minded organizations in the states and at the federal level to see what's coming over the horizon, what emerging trends are happening in the paid leave space, and ultimately where plan sponsors need to be focused most.

Josh Seidman: Ah, perfect. Perfect, Dillon, thank you so much. And in terms of now today, what states were—maybe are—on your radar big picture in terms of anticipated or potential paid leave developments that could come to fruition in 2026? Where do employers need to zoom in and focus their attention?

Dillon Clair: Specifically in the context of 2026, there are a few states, coming out of 2023, '24 into 2025, that had been making progress in the paid leave space. And heading into this year, our real priorities—our priority states—were Virginia, Hawaii, Illinois, Pennsylvania, and to an extent, New Mexico.

Stayed on top of everyone's mind for 2026 is obviously Virginia. They enacted not only paid family medical leave, but also a paid sick and safe leave law this year after several years in a row of it being vetoed by former Governor Youngkin. And so Virginia is kind of breaking the quiet before the storm, as it were. Over the last two years there haven't been new state programs enacted, but Virginia is officially on the board, both in the paid family medical leave and paid sick leave space, for 2026 now.

So obviously, everybody is focused on Virginia, which is the first state to kind of end the quiet before the storm, as it were. So now Virginia is the newest paid family medical and paid sick leave state laws on the books. But looking beyond Virginia, there's already quite a few states that have adjourned for the year. I think there's 15 or so states in session now. A few of those will adjourn through summer—through June, July, and then beginning of August. And then we'll be really left with 10 to 12 states, if not year round but close to year round, that'll really just be picking up and starting their legislative focus through the summer and into the fall. And of those states in the paid leave space, definitely the biggest areas of focus are on Pennsylvania and Illinois.

Josh Seidman: Perfect, Dillon. That's a great overview. Thank you for teeing those up. So I think what our plan now is going to be is to jump into the heavy hitter of the bunch, and that will be Virginia. And we'll zoom in on some topics involving both their paid family medical leave and their paid sick leave activity, as you previewed for folks with that last response. And then we have you back for very next episode—then we'll really zoom in on some of these additional states, including Pennsylvania, Illinois, and whatnot. So really looking forward to all of that with you. But for now, what can you tell me about the paid family medical leave legislation in Virginia?

Dillon Clair: Yeah, absolutely. So Virginia's story, as I mentioned, goes well back to 2023 and earlier. It's not a recent state that has just recently got into the paid family medical leave or paid sick leave conversation, for that matter. Going back several years, there were legislation in the works to establish these policies, continue to build momentum. Actually, in 2024 and 2025, the bills were passed by both chambers on a pretty bipartisan line, but were ultimately vetoed by former Governor Youngkin on generally surrounding concerns about the impact and stress and strain that new paid leave requirements would put on businesses across Virginia.

And so Governor Spanberger through last year ran on a platform supporting paid leave. It was a very large part of her campaign platform. And so the general understanding was that if the only thing holding these back before this year were governor vetoes, and you have a governor that ran on signing the laws, it was a no-brainer. And so as we saw through February, the bills advanced pretty quickly. A lot of different committees were saying, "We've been here, we've done that. Let's keep it going." So ultimately, both HB 5 and SB 2 were both enacted and sent to Governor Spanberger.

I guess the interesting part—and this is just, I guess, an anecdote of Virginia—I cut my teeth in Virginia politics and always do take some pride in some of the bipartisan compromises they can make. And so I'll say that the legislation heading to Governor Spanberger's desk was pretty, pretty reasonable, pretty well balanced. There are states that have enacted policies in the last

few years that try to go above and beyond on every different metric. They try to say, "All right, the norm is 12 weeks, we're going to do 26. A family member—it's anyone you want to designate. You're immediately eligible." So I mean, there's plenty of different standards that ERIC and our member companies would like to see tweaked a little bit in different state laws, but I'll say on the whole, Virginia's is quite reasonable. It's 12 weeks of leave. Importantly, does allow private plan exemptions. So if an employer already offers or is able to offer private paid leave benefits that go above and beyond the state plan, that employer can design and administer those benefits internally and get a waiver from the state program.

And so on the whole, if you compare it to a lot of different state programs, you'll see that it's a little more balanced in some of those different standards. And so when it got to Governor Spanberger's desk, I think maybe not a shock, but definitely a surprise to a lot of people, her office actually sent back some proposed tweaks and changes. Nothing groundbreaking. It did come along with a note saying, "Hey, I just want everybody to perfectly understand that I'm still extremely supportive of this. I'm just trying to make small improvements that will ultimately help employers and employees comply in the long term."

So those tweaks mostly revolved around changes to the definition of family member, which was one of the sticking points that ERIC and some of our member companies weren't crazy about in both of the bills. Usually, the FMLA—the federal unpaid family leave law—provides leave to take care of spouses, parents and children. Most states or almost all states now also include grandparents, grandchildren, and siblings in that equation. And ERIC is very supportive of that. Our concern in the family member definition space kind of comes in when these catch-all terms are applied: any other person residing in the home, or another person related by blood or affinity, or a designated person, which California adopted last year.

And so in the context of Virginia, we definitely appreciate the tweaks that were made. And so there's still ultimately is a bit of this open-ended catch-all family member definition included in the Virginia bills. But that definition is definitely improved. And to Governor Spanberger's point, it's improved in a way where individual employers may be able to interpret it and apply it a little better. And so the definition has been changed to and clarified to include any individual, one, who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for such an individual, and two, who depends on the employee for care. Then it specifically says that family member does not include an individual who simply resides in the home with no expectation that the employee care for the individual.

So again, the real issue in the paid leave space is that each individual state has different definitions, and this is no exception, but we obviously do appreciate the efforts taken there to make the definition more comprehensible and compliant.

Josh Seidman: Very good, Dillon. Now that's such a good overview. You know, growing up with Virginia politics, this was maybe my first foray into the space. I've tracked the vetoes of the last couple of years that you mentioned during that last response by Governor Youngkin, but other than tracking the activity from 2024 and 2025, this process and the proposed amendments and the legislature reconvening to assess those amendments—that was all fascinating and a really edge-of-your-seat kind of stuff for those of us who are paying attention at least. So, you know, I'm happy to see where everything kind of landed, at least from the sake of clarity and understanding.

One thing that is so fascinating to me with the Virginia paid family medical leave legislation, just at a super high level, is the go-live date for when benefits become available—picking December

1st, 2028, instead of say maybe January 1st, 2029, which would be sort of more common across paid family medical leave programs and other leave laws as well when they go live, not always at the start of the year. But if you're close to January, it seems interesting that December 1st was where it landed rather than a January 1st go-live date.

Dillon Clair: And we'll see how that actually shakes out. I think, like I said, the approach is a little more mature. I think Virginia's had their eyes open a little bit to what they can and can't do and by when. But as we've seen in, I want to say, more than half of these state paid family medical leave programs, there's always delays. There's typically legislation passed pushing that rollout date down the road a little bit so that administrators can get back under their skis. So we'll see.

Josh Seidman: Dillon, thank you very much for diving into all those details on the paid family medical leave side of Virginia's legislative activity. But as you previewed for folks a few minutes ago, paid family medical leave was not the only big going-on in Virginia when it came to paid leave, new legislation, and potential for enactment this session. So I want to turn our focus now to paid sick leave. So tell us what's been going on with the separate paid sick leave bills through the 2026 Virginia State Legislature, any updates about the activity from the legislature and the governor there, and also any takeaways or thoughts on the details, the substantive components of the paid sick leave proposal.

Dillon Clair: Yeah, absolutely. Thanks, Josh. I'll say it's not entirely unique, but it is interesting that Virginia moved forward on paid family medical leave and paid sick leave in the same year. You know, Minnesota also did that in 2023—also a case of, we'll call it, Democratic buildup and then eventually exploding and these laws being enacted with the political shift left there in each of those states.

You know, in Virginia, it's another case, just like paid family medical leave, of the legislature advancing these bills multiple years in a row, them being vetoed by former Governor Youngkin, and then making it a pretty easy case for Spanberger to uphold a campaign promise and simply sign the bills when they're passed by the legislature again this year. And so, much like the paid family medical leave, that was expected to be the case, but also equally surprised was the suggested changes made by Governor Spanberger along with her action on the bill when it was passed.

And so, much like paid family medical leave, she suggested a change to the family member definition that would narrow it a bit. Interestingly—I'm sure a book could be written on the procedural outcome and why her amendments were rejected in paid sick and safe leave but not in paid family medical leave. That could be a conversation for another day. But now we're essentially left with a bill that has now been signed by her and has been enacted as of May 20th, just last week, that has a slightly different family member definition. We've seen that become an issue in states when you're trying to coordinate benefits between state program benefits, employer benefits, paid sick and safe leave, paid family medical leave. We've seen that that can become an issue for employer compliance.

But at the end of the day, the bill does include, as I mentioned, the front-loading language that we like to see. It treats cash out and carryover and front-loading language relatively well in our mind, but the family member definition definitely raises some potential concern and could use some work through regulatory development in the months to come. But all that to say, paid sick and safe leave—here to stay now on the books in Virginia.

Josh Seidman: Good stuff, Dillon. Thank you for that overview. The family member definition is always an interesting topic and one that a lot of folks from the business side are paying attention to. The point you made a few minutes ago about the expansive nature of some of these family member definitions going beyond parent, child, spouse, sibling, grandparent, grandchild into close association by blood or whatnot—those expansions began in the paid sick leave space. They grew up in that space. And then as the paid family medical leave laws proliferated, several of them started adopting those more expansive terms and additions as part of their paid family medical leave family member definitions as well, which has always been interesting to me, given the key fundamental distinctions between paid sick leave and paid family medical leave. The former is more limited in terms of hours, where the latter is these more extreme major life events, but available time for weeks, months, depending on what law we're talking about. So a more expansive family member definition can have a bigger impact on the business and the trickle-down effect from there.

Dillon Clair: Absolutely. Absolutely. And I think if we jump back 10 years ago, paid sick leave—which was, at the time, just paid sick leave, not paid sick and safe leave—and then paid family medical leave were very, very different things, not just the long versus short term, but the use for it. And I think over the years, it's mostly been paid sick and safe leave kind of reaching up and expanding out. There's a lot of different reasons included in state paid sick and safe leave in recent years than there have been in the past, whether it's bereavement leave, school event leave, public health emergency leave, even family care and parental types of leave on a short-term basis.

And so yeah, that distinction has been blurred a little bit over the years. But yeah, the family member definition clearly stands to have a much bigger impact if you're taking 12 weeks off each year to care for your uncle versus two or three days off to care for a child. And so that's very clear. The compliance burden on employers is very clear as well. But I think there is a broad approach from the employer community that they recognize that the nuclear family is maybe not the status quo and that non-traditional family structures are much more the norm—in that you don't necessarily have set familial roles. And so we recognize there's an interest to be able to use this leave to care for the people closest to you. But when those definitions are different state to state or are unclear even within an individual state, it makes that compliance a lot harder for employers, and ultimately for employees to understand their rights and what they're able to take leave for.

Josh Seidman: Yeah, exactly, Dillon. All really important points. And that last one, especially, sort of nail on the head—which is the impact of confusion and being overbroad, not only on the company and its administration and compliance efforts, but also then the impact it has as it flows through to their entire workforce.

And Dillon, one final thought on Virginia for today's episode. Can you just let our listeners know—remind them—in terms of the paid sick leave mandate that has now been enacted, when will it actually go into effect? What's the date that folks need to keep in mind for when they need to have their ducks in a row and when these obligations first begin?

Dillon Clair: Yeah, absolutely. I'll say that, you know, paid sick and safe leave obviously takes a little less planning. It's not an entire fund to be able to roll out at the state level. And so while we've seen states push back their regulatory development timeline and their rollout timeline, that's probably less likely on the paid sick and safe leave side.

And so in Virginia, now that the bill has been enacted, it's set to begin on July 1, 2027, applying to employers with 50 or more employees. Then January 1 of 2028 for employers with 25 to 50 employees. And then finally, beginning January 1, 2029, that will apply to all employers with at least one employee in the state, under the definition of family member there. So definitely stretched over a couple of years there, but July 1st, 2027, not far off.

Josh Seidman: Thank you so much, Dillon, for spending time with us today and sharing your thoughts and insights on the newest activity involving Virginia paid leave, on the paid sick leave and paid family medical leave fronts. Obviously a lot going on there, and I'm so excited that this is not going to be our only conversation in the near immediate term. Very excited to be discussing some other highlights of additions and potential additions for the country, state, and local paid leave patchworks with you in our next episode coming out shortly.

Dillon Clair: Absolutely. Thank you so much. Hopefully listeners aren't too sick of me, but we'll have to keep pushing for that five-timer club and that jacket.

Josh Seidman: Definitely not sick of you, and the five-timers club—we're going to get there. 2027 sounds like it's going to be a blast. So we've already got number four earmarked for you. So looking forward to it.

Dillon Clair: That sounds good to me. I'll hold you to it. Yeah, definitely more than enough paid leave activity over the next couple of years to keep us all busy and on topic.

Josh Seidman: Wonderful. Thank you, Dillon. And thank you so much to our listeners for tuning in today's episode. We'll see you next time.